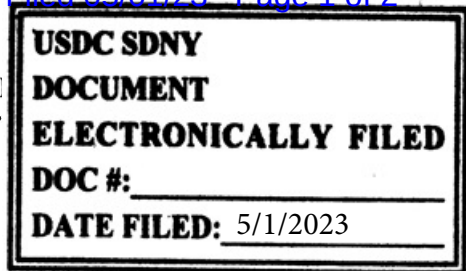




MELTZER LIPPE GOLDSTEIN & J
 190 Willis Avenue, Mineola, NY 11501 •
www.meltzerlippe.com



Daniel F. Carrascal, Esq.
 Writer's Direct Dial: (516) 747-0300 ext. 164
 Writer's Facsimile: (516) 237-2893
 Email: dcarrascal@meltzerlippe.com

April 28, 2023

Via ECF

The Honorable Katharine H. Parker
 United States Courthouse - Southern District of New York
 Daniel Patrick Moynihan United States Courthouse
 500 Pearl St., Room 750
 New York, NY 10007-1312

Re: *Kakha Abuladze et al. v. Apple Commuter, Inc. et al.*
Docket No. 22-cv-08684-(GHW)(KHP)
Our File No.: 13681-01070

Your Honor:

This firm represents Defendants RPH Hotels 51 Street Owner LLC a/k/a Hampton Inn Times Square North, New York Marketing, Inc. a/k/a NYMA, and Moosazadeh, Hamayoon, Diedrich, Michael a/k/a Hotel at Times Square in the above-referenced matter. We write pursuant to Your Honor's Individual Practice Rule I(C) to respectfully request the deadline for all defendants to file the consolidated Motion to Dismiss and all related deadlines (opposition and reply papers) be extended for thirty (30) days, based on the date Plaintiffs re-file the Second Amended Complaint ("SAC"). Defendants' current response date is May 9, 2023.

As the Court is aware, pursuant to Your Honor's February 9, 2023 Order, the Court Ordered: 1) Plaintiffs to file the SAC by April 10, 2023; 2) Defendants to file their consolidated Motion to Dismiss ("MTD") by May 9, 2023; 3) Plaintiffs to file their opposition brief by June 9, 2023; and 4) Defendants to file their consolidated reply by June 30, 2023. See ECF No. 52.

On April 11, 2023, Plaintiffs filed the SAC. See ECF No. 57. However, on April 12, 2023, the Court advised Plaintiffs the SAC was deficient because Plaintiffs failed to select all appropriate parties and filed the SAC after the April 10, 2023 deadline. Accordingly, the Court advised Plaintiffs to either obtain leave from the Court or opposing parties' written consent to re-file the SAC. In recognition of the foregoing delay, all defendants respectfully request the deadline to file the MTD and all related deadlines (opposition and reply papers) be extended for thirty (30) days, based on the date Plaintiffs re-file the SAC. This is defendants' first request for an extension of time to respond to the SAC. This request will not affect any other deadlines and Plaintiffs' counsel consents to same.

It should be noted, in accordance with the Court's December 5, 2022 Order (see ECF No. 36), co-counsel for the following defendants consent to the present request and are requesting

MELTZER LIPPE GOLDSTEIN & BREITSTONE, LLP

The Honorable Katharine H. Parker
April 28, 2023
Page 2

same: 1) Executive Le Soleil New York LLC a/k/a Executive Hotel; 2) CDL Hotels USA Inc. a/k/a Millennium Hilton; 3) Wolcott Hotel Co. a/k/a Wolcott Hotel; 4) 4 West 31 Street XYZ Corp.; 5) Imperial Hotel LLC a/k/a Imperial Court Hotel; 6) Edison Management Co. LLC a/k/a Edison Hotel; 7) Brisam Management DE LLC a/k/a Holiday Inn Chelsea; 8) HHLP 52 Lessee LLC a/k/a Hilton Garden Inn (52); and 9) 237 W 54 Owner, LLC a/k/a Hilton Garden Inn (54).

Further, we take this opportunity to advise the Court regarding a recent bankruptcy petition filed by defendant Apple Commuter, Inc. ("Apple"). As the Court is aware, during the February 9, 2023 initial conference, the parties advised Your Honor regarding bankruptcy petitions filed by defendant Apple Commuter, Inc. in or around 2019 and defendant Biren Shah in or around August 2022. We recently discovered Defendant Apple filed a bankruptcy petition pursuant to Chapter 11 of the bankruptcy code on or around March 31, 2023. See In re Apple Commuter, Inc., Ch. 11 Case No. 1-23-41107-ESS (E.D.N.Y. Mar. 31, 2023).¹ Accordingly, both defendants Shah and Apple are presently engaged in Chapter 11 bankruptcy proceedings.

We sincerely thank the Court for its time and attention to this matter and its consideration of the foregoing request.

Respectfully submitted,

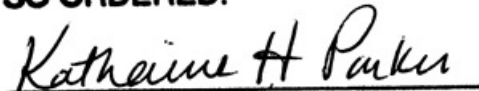


Daniel F. Carrascal

Although Plaintiffs did not seek leave of the Court to file a Second Amended Complaint after the deadline, the Court grants Plaintiffs leave to do so, and directs Plaintiffs to re-file the Second Amended Complaint no later than **May 5, 2023**. The deadline for Defendants to answer the Second Amended Complaint, assuming one is filed by May 5, 2023, is extended to **June 9, 2023**.

The Court thanks Defendants for advising it that Defendants Biren Shah and Apple Commuter have filed for Chapter 11 bankruptcy. In light of the Chapter 11 filings, this action is automatically stayed as against Defendants Biren Shah and Apple Commuter pursuant to 11 U.S.C. § 362. However, the Case is not stayed as to the other Defendants. *See In re Sklar*, 626 B.R. 750, 761 (Bankr. S.D.N.Y. 2021) (noting that the automatic stay does not apply to the action as against the non-debtor defendants).

SO ORDERED:



**HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE**

5/1/2023

¹ See Defendant Apple Commuter, Inc.'s Bankruptcy Petition, dated March 31, 2023, which is annexed hereto as Exhibit A.